

(1999) 01 GAU CK 0036
In the Gauhati High Court
Case No : Civil Rule No. 4499 of 1997

Ghanashyam Gogoi and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-01-1999

Acts Referred:

Assam Secondary Education (Provincialised) Service Rules, 1982 — Rule 10A, 10A(1), 10A(2)
Constitution of India, 1950 — Article 226

Citation : (1999) 1 GLT 117

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : B.K. Bhattacharyya and C.B. Gogoi, for the Appellant; H.N. Sarma, Addl. Sr. G.A. and R.P. Kakati, for the Respondent

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution of India, the two Petitioner have prayed for quashing the order dated 21.5.97 of the Director of Secondary Education, Assam, appointing Respondent No. 6 as Head Mistress of Simoluguri High School.

2. The facts briefly are that the two Petitioners and the Respondent No. 6 are graduate teachers of the Simoluguri High School. For selection to the post of head master, the Inspector of Schools, (i/c) S.D.C., Sibsagar, sent a circular to the Principals/Headmaster/Headmistress of different provincialised High and Higher Secondary Schools of Sibsagar District Circle on 13th May" 92 calling for the particulars of graduate teachers who had rendered ten years of service upto 30.4.92. In response to the said circular dated 13th May" 92, the Headmaster of Simoluguri High School in his letter dated 22nd May" 92 sent the particulars of graduate teachers of the said school including those of two Petitioners and the Respondent No. 6. Thereafter, the Inspector of Schools in-charge, S.D.C. Sibsagar, intimated the Principals/Headmasters of the concerned High and Higher Secondary Schools in his letter dated 9.6.92 about the dates of interview/selection to be held by the District Selection Board and in the said intimation the

date of interview/selection amongst the teachers of Simoluguri High School was mentioned as 25.6.92. Accordingly, the interview was held on 25.6.92 and on the basis of the said interview, Respondent No. 6 and one Sri N.N. Duara were selected for appointment to the posts of Assistant Headmistress/Assistant Headmaster in the Simoluguri High School by the District Selection Board. On the basis of the said selection made in the year 1992, the Respondent No. 6 was appointed by order dated 21.5.97 of the Director of Secondary Education, Assam, as Headmistress of Simoluguri High School, Sibsagar. Aggrieved by the said order dated 21.5.97, the Petitioners have moved this Court for appropriate relief.

3. At the hearing, Mr. B. K. Bhattacharyya, learned Counsel for the Petitioners referring to the averments in the writ petition submitted that no intimation whatsoever was sent to the two Petitioners about the date of interview/selection and as a result the Petitioners did not get any opportunity to appear before the District Selection Board for interview/selection. Mr. H N Sarma, learned Additional Senior Government Advocate, Assam, appearing for the Respondents 1 to 5 and Mr. R. P. Kakati, learned Counsel appearing for the Respondent No. 6 on the other hand, submitted that soon after receipt of the letter dated 9.6.92 from the Inspector of Schools i/c, SDC, Sibsagar intimating the date of interview/selection for the post of Assistant Headmaster in Simoluguri High School as 25.6.92, a notice was circulated to all the six candidates including the two Petitioners and the Respondent No. 6 on 20.6.92 by the then Headmaster of the school and while four candidates appeared in the interview/selection held on 25.6.92 before the District Selection Board, the two Petitioners did not appear before the Selection Board on the said date. Mr. Kakati, learned Counsel for the Respondent No. 6 vehemently argued that the fact that four candidates out of six candidates appeared for interview on 25.6.92 would show that all the six candidates were duly intimated about the interview/selection on 25.6.92. He further contended that even the notification of selection would show that besides Respondent No. 6, Sri N N Duara from Simoluguri High School was selected for appointment to the post of Assistant Headmaster/Asstt. Headmistress. Hence, the contention of the writ Petitioners in the writ petition that only the name of Respondent No. 6 was sent for selection/interview and only Respondent No. 6 appeared at the said interview/selection is not at all correct.

4. The question as to whether or not the two Petitioners were intimated about the date of selection/interview is a question of fact and cannot be decided in a writ application where parties dispute the factual position on affidavit. Considering however the documents which have been annexed to the affidavit-in-opposition of Respondent No. 6 it is difficult for this Court to record a definite finding that the two Petitioners were not intimated about the date of selection/interview particularly when four other candidates appeared to have participated in the interview/selection held on 25.6.92. Thus, no relief can be granted to the Petitioners on the basis of their contention that no information whatsoever was given to them about the date of interview/selection as a result of which they did

not get the opportunity to appear in the interview/selection conducted by the District Selection Board in the year 1992.

5. It was next contended by Mr. Bhattacharyya that the order by which select list was published (Annexure-"D" to the writ petition) would show that the select list of candidates for the post of Assistant Headmaster/Assistant Head Mistress would ordinarily remain valid for one year from the date of publication. He also relied on the provisions of Rule 10-A of the Assam Secondary Education (Provincialised) Service Rules, 1982, for his submission that the selection for the post of Assistant Headmaster remains valid only for a period of one year and not more. According to Mr. Bhattacharyya therefore the selection held in the year 1992 cannot be acted upon by the authorities to make appointment to the post of Assistant Headmaster/Assistant Headmistress in the year 1997 particularly when the vacancy itself arose in the year 1997.

6. Rule 10-A of the Assam Secondary Education (Provincialised) Service Rules, 1982, is quoted here in below:

10-A. GENERAL PROCEDURE FOR PROMOTION-(1) Before the end of each year the appointing authority shall make an assessment of the likely number of vacancies to be filled up by promotion in the next year in each cadre and in each school.

(2) The appointing authority shall then furnish to the Board the following documents and information with regard to the eligible candidates for promotion:

(i) information about the number of vacancies;

(ii) list of candidates eligible for promotion in order of seniority (Separate lists for each cadre of starting the name of the school shall be furnished indicating the cadre to which the case of promotion is to be considered.)

(iii) Character rolls and other records, if any, of the candidates.

(3) the appointing authority shall simultaneously request the Board to recommend within one month a list of candidates found suitable for promotion in the order of merit. The Board shall recommend candidates about double the number of vacancies in the order of preference.

(4) The appointing authority, on receipt of the list of recommended candidates from the Board shall fill up the vacancies in accordance with the preference shown in the list.

7. It is clear from Sub-rule (1) of Rule 10-A quoted above that an assessment of the likely number of vacancies to be filled up by promotion in the next year in each cadre and in each school is to be made by the appointing authority. Therefore, selection that is made for promotion under Rule 10-A is for appointment to the vacancies which would arise in the succeeding year. Thus, when selection was made in the year 1992 of various persons to be appointed to the post of Assistant Headmaster/Assistant Headmistress, the appointment on

the basis of the said selection could only be made to the vacancies which arose in the years 1992 and 1993 and not to the vacancies which arose in the year 1997. This legal position is further fortified by the fact that under Sub-rule (2) of Rule 10-A of the aforesaid Rules, 1982, Character rolls and other records, if any, of the candidates are to be considered by the Selection Board. Where therefore a candidate is not selected in the year 1992, he can yet be selected for a vacancy in the year 1997 on the basis of his performance and character roll for the years 1993, 1994, 1995 and 1996. In other words, selection held in the year 1992 for appointment to the post of Assistant Headmaster/Assistant Headmistress cannot hold good for appointment to the vacancies arising in the post of Assistant Headmaster/Assistant Headmistress in the year 1997.

8. Admittedly, in the present case, the Respondent No. 6 has been appointed to the vacancy which arose in the year 1997 on account of retirement of Sri N. N. Duara as would be clear from the impugned order dated 21.5.97 itself. Appointment of the Respondent No. 6 by the said impugned order dated 21.5.97 to the post of Assistant Headmistress on the basis of selection made in the year 1992 is therefore not in accordance with the general procedure for promotion laid down in Rule 10-A of the Rules, 1982 and has to be quashed and a fresh selection has to be made in accordance with the said Rules.

9. For the reasons stated above, I dispose of this writ application by quashing the impugned order dated 21.5.97 and by directing that a fresh selection will be made for appointment to the post of Asstt. Headmaster/Assistant Headmistress in the vacancy arising on account of retirement of Sri N.N. Duara in accordance with the aforesaid Rules and the cases of all eligible candidates including the two Petitioners and the Respondent No. 6 will be considered by the District Selection Board. Fresh selection will be completed within March, 1999 and in case the two Petitioners are selected and are appointed they shall be given all financial and terminal benefits even though they retire in the meanwhile. It is however made clear that the Respondent No. 6 will not be asked to refund the financial benefits which she had received till the date of this judgment, and the Respondent No. 6 will continue in the post of Assistant Headmistress in officiating capacity until such fresh selection and fresh appointment is made pursuant to selection to the post of Asstt. Headmaster/Headmistress. It is further made clear that it will be entirely for the District Selection Board to decide as to whether the Petitioners who may retire in the meanwhile should be called for the interview or not and in case the District Selection Board decides not to call the two Petitioners for interview/selection on account of their retirement, the character Rolls and other records of the two Petitioners will be considered for the purpose of such selection/ interview and appointment in accordance with the aforesaid Rule 10-A of the Rules, 1982. The Inspector of Schools, S.D.C., Sibsagar will immediately initiate action for compliance with this judgment on receipt of a certified copy of the judgment from the Petitioners.

10. However, considering the entire facts and circumstances of the case, I leave

the parties to bear their own costs.